

# Sweden: Post-injunction liability for third party actions clarified

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By Kristian Fredrikson, Dephi and Jan Lindberg, Trust Ltd.  
This time I want to introduce a fellow author from Sweden, Kristian Fredrikson, who promised to write about this interesting recent decision from the Supreme Court (Högsta domstolen 18 June 2015, case no B6341-13). It does not concern patents per se but an infringer's liability for a third party's infringement after an injunction has been decided, and it's principle content should be directly applicable in similar situations where a patent have been infringed.

A Swedish furniture company ("the infringer") sold chairs ("Stilo") that were found by the courts to infringe the copyright pertaining to a well-known Swedish design chair held by another Swedish furniture company ("the rights holder"). Stilo was manufactured in Poland by a company ("the manufacturer") which was partially owned by the father of the owner to the infringer. The sale of Stilo chairs rendered the infringer an injunction by the penalty of a fine of SEK 500 000.

A few days after the court decision, the rights holder ordered a Stilo chair from a furniture dealer. The chair was duly delivered by the manufacturer four weeks later. The court of first instance then found that the infringer had violated the injunction and ordered the payment of an adjusted fine of SEK 100 000. The appeals court found that the infringer had taken sufficient action to comply with the injunction and that the company was not liable for the actions of the manufacturer, and dismissed the claim for payment of the fine.

The Supreme Court concluded that an injunction may imply the liability for an infringer to try to prevent a third party from taking certain action. Failing to do so constitutes a breach of the injunction. An injunction may as a rule not imply liability for a third party's actions, except in particular cases if the infringer and the third party have economic ties and the infringer have a practical and legal control of the third party, or possibly if they have the same owner.

The Supreme Court further concluded that in lack of such ties an infringer may be liable for a third party's action also if the two have coordinated their actions to avoid the injunction. As it may be difficult to prove that such coordination has taken place, the Supreme Court then found that coordination could be presumed if the externally visible circumstances in the relation between the infringer and the third party strongly indicate coordination in respect of the injunction.

In the case, the rights holder was found by the Supreme Court to have proven that the circumstances were present, while the infringer had showed neither that sufficient action was taken by it nor that no coordination had taken place. The undue coordination presumption thus prevailed and the infringer was found to be liable for the manufacturer's actions.

Consequently, as a rights owner you can go after undue coordination on the infringer's side also when no legal connection can be proved, which seems reasonable. As an infringer, you must take reasonable and necessary action as fast as ever before to stop further infringement by yourself and third parties in a position to commit infringement. Such actions must be sufficient to extinguish any possible indications of cooperation in relation to the infringement. We are not aware of a case that would contain exactly the same facts from Finland but we presume the case has relevance also in this respect due to our joint legislative history.